

REMARKS

A. Status of the Application

- Claims 11 to 18, 20 and 38 to 64 are pending in the application, of which claims 11, 41 and 53 are independent claims.
- Claims 1 to 10, 19 and 21 to 37 are cancelled.
- Claims 11, 13 to 18 and 20 are amended.
- Claims 38 to 64 are new. No new matter has been added.

Accordingly, entry of the amendments and the new claims is respectfully requested. Applicant has amended the claims to recite particular embodiments that Applicant, in his business judgment, has determined to be commercially desirable at this time. The claim amendments have not been submitted for any reasons relating to patentability, such as to overcome any of the Office Action's rejections.

Applicant intends to pursue the subject matter of any previously or presently cancelled claims, in one or more continuing applications.

B. Claim Rejections Under 35 U.S.C. §103(a)

Claims 1-9, 11-19, 21-31, 33 and 34 under 35 U.S.C. § 103(a) were rejected as allegedly unpatentable over U.S. Patent No. 5,803,500 ("Mossberg") in view of U.S. Patent Application No. 2002/0062276 ("Krueger"). Applicant traverses. The Examiner has not made a *prima facie* showing that any of Applicant's claims are obvious.

1. Certain Limitations Are Not Disclosed in Mossberg and Krueger

Claims 11, 41 and 53 recite, *inter alia*, “transmitting an indication that the selected item is available for auction *for a period of time*” and “determining that *the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value*” (emphasis added).

Neither the Mossberg nor Krueger references teach or suggest determining that the period of time available for auction is based on a tiered system, in which “*a first quantity of bids that is received before a first time interval is less than a first pre-determined value*” and “*a second quantity of bids that is received before a second time interval is less than a second pre-determined value.*” (emphasis added).

Rather, Mossberg expressly states that it follows “the standard procedure used in most live auctions up to, and including, the determination of the winner and the price to be paid” (col. 5, lines 5-6). As such, Mossberg states that the “final bid is determined by the *absence of subsequent bids*, and by the *auctioneer’s announcement* that the bidding for the auction item in question is closed” (col. 5, lines 10-13) (emphasis added).

Similar to Mossberg, Krueger also uses a live auctioneer to make the decision to end the bidding process. Specifically, Krueger states the following:

It is the auctioneer who historically makes the definitive decision to end bidding for an item. This illustrates the necessity to allow wireless subscribers to participate in real time, as if they were physically present at the live auction. This invention allows wireless subscribers to participate in the auction, and interact with the auctioneer in the same manner as if they were physically present at the live auction (para. 0042).

When a claim recites a limitation that is absent from the art, the claim is not obvious. MPEP §2143.03; *Motorola v. Interdigital Technology Corp.*, 121 F.3d 1461, 1466-67, 43 USPQ2d 1490, 1490-91 (Fed. Cir. 1997) (reversing a jury verdict of

obviousness because an element was not taught in the particular art relied upon, even though that element was known elsewhere). Therefore, the Examiner has failed to state a *prima facie* case of obviousness for claims 1, 41 and 53.

2. There is No Substantial Evidence of Motivation to Combine and No Reasonable Expectation of Success

The alleged motivation proffered by the Examiner for combining Mossberg and Krueger has absolutely no basis in the references themselves. Moreover, the Examiner fails to provide any methodology for practically and realistically applying any features of Krueger to modify Mossberg. Instead, the Examiner merely provides general, sweeping and inappropriate assertions of an alleged motivation to combine the references, without any specific support.

For example, on page 5 of the Office Action, the Examiner claims that:

...it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Mossberg at the time the invention was made to implement a wireless connection as taught by Krueger, in order to harness the best geographically unbounded real time systems available using wireless technology for auction events, and thereby increase auction participation.

The Examiner recites this same motivation of “harness[ing] the best geographically unbounded real time systems available using wireless technology” on page 6 of the Office Action, as motivation for modifying Mossberg to implement “a wireless connection to either a local or remote auction server.”

Although wireless technologies were available at the time of Mossberg’s filing, Mossberg expressly does not reference the use of wireless technologies. Rather, Mossberg teaches placing a bid by manually “affixing an adhesive bid label bearing a bidder code” to a bid sheet (col. 4, lines 32-35). Alternatively, Mossberg states that bidders may “insert their bidder card and code into [a card reading] device before placing a bid on the item” (col. 4, lines 65-67). Nowhere does Mossberg disclose a desire to implement remote,

wireless technologies. Thus, Applicant demands that the Examiner provide evidence for the proffered motivation to combine and/or expand the teachings of the art if the rejections are to be maintained.

Similarly, the Examiner states on page 7 of the Office Action that:

... it would have been obvious to one of ordinary skill in the art at time of the invention was made to modify the system and method of Mossberg to implement a rule that predetermines a start and stop date and time for an auction as taught by Krueger, in order to ensure fairness in identifying the time and date of an auction, and thereby encourage participation.

Yet, Mossberg already contemplates a means for fairly determining the final bid, namely Mossberg teaches that “[t]he final bid is determined by the absence of subsequent bids, and by the auctioneer’s announcement that the bidding fro the auction item in question is closed” (col. 5, lines 10-13).

Mossberg would not likely implement “a rule that predetermines a start and stop date and time for an auction as taught by Krueger,” since such a rule runs counter to Mossberg’s teachings and would render its auctioneer obsolete. Similar to the discussion above, Applicant demands that the Examiner provide evidence for the proffered motivation to combine and/or expand the teachings of the art if the rejections are to be maintained.

Furthermore, the Examiner is silent with respect to reasonable expectation of success—an element required for the showing of any obviousness rejection. MPEP §2143.02. Due to the omission of each of the three essential elements for an obviousness rejection (i.e., claim language, motivation to combine, and reasonable expectation of success), three separate reasons exist for no rejection. Even if a rejection is maintained or raised, final rejection is premature.

For at least the foregoing reasons, any rejection under §103(a) that may exist should be withdrawn.

C. General Comments on Dependent Claims

Each dependent claim is patentable for at least the same reasons as the independent claim on which it depends. Thus, Applicant believes that it is unnecessary at this time to argue the allowability of each dependent claim individually. However, Applicant does not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor does Applicant concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

D. Conclusion

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as a concession of any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at (857) 413-2056.

Respectfully submitted,

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